RICHARD V. BOWMAN

IBLA 75-211 Decided March 31, 1975

Appeal from decision of the Eastern States Office of the Bureau of Land Management denying reinstatement of acquired lands oil and gas leases ES 11105 and ES 11282.

Affirmed.

1. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Rentals

   It is proper to deny a request for reinstatement of an oil and gas lease terminated by operation of law for failure to pay advance rental timely where the petitioner has not shown that his failure to pay the rental on or before the anniversary date of the lease was justifiable or not due to a lack of reasonable diligence.

2. Oil and Gas Leases: Rentals -- Oil and Gas Leases: Termination

   An oil and gas lease is automatically terminated by operation of law where an unsigned rental check is tendered prior to the anniversary date of the lease but is not signed and returned until after the anniversary date.

3. Federal Employees and Officers: Generally -- Federal Employees and Officers: Authority to Bind Government

   Bureau of Land Management personnel have no affirmative duty to take extraordinary measures to save an oil and gas lessee from the possible consequences of his own negligence.

APPEARANCES: James W. McDade, McDade and Lee, Washington, D.C., for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Richard V. Bowman has appealed from the October 8, 1974, decision of the Eastern States Office, Bureau of Land Management, denying his petition for reinstatement of acquired lands oil and gas leases 1/ ES 11105 and ES 11282 which terminated on July 1, 1974.

Rentals for both leases were due on or before July 1, 1974. Appellant tendered unsigned checks for the rentals on June 27. The Bureau returned the checks to him with a form notice on June 28, 1974, indicating, "The remittance has not been signed by the maker. Please sign and return promptly to this Office." Appellant signed and returned the checks, which were received by the Bureau on July 8, 1974. The Bureau issued a lease termination notice on August 26, 1974, whereupon appellant filed a timely petition for reinstatement. The substance of his petition is that the checks were timely received by the Bureau but he had inadvertently failed to sign them, and that he returned the signed checks promptly after they were returned to him for signing.

The Bureau denied the petition for reinstatement on the ground that "[f]ailure to sign these checks through inadvertence, with no other reference to extenuating factors, does not bring the lessee within the ambit of the 'justifiable' or 'reasonable diligence' tests" of the controlling regulation.

The Act of July 29, 1954, 68 Stat. 585, amending section 31 of the Mineral Leasing Act of 1920, 30 U.S.C. § 188(b) (1970), provides that an oil and gas lease will terminate by operation of law if the annual rental is not paid on or before the anniversary date of the lease. However, the Act of May 12, 1970, 84 Stat. 206, which further amended section 31 of the Mineral Leasing Act, 30 U.S.C. § 188(c) (1970), provides that a terminated lease may be reinstated upon timely petition by the lessee if the failure to pay on time was either justifiable or not due to a lack of reasonable diligence. Regulation 43 CFR 3108.2-1(c).

1/ The Mineral Leasing Act for Acquired Lands, 30 U.S.C. § 352 (1970), provides for the leasing of oil and gas deposits in acquired lands under the same conditions as contained in the Mineral Leasing Act of 1920, 30 U.S.C. § 181 et seq. (1970). Duncan Miller, 17 IBLA 128, 130 (1970).

[1] We cannot find that appellant's failure to pay the rental on time is either justifiable or not due to a lack of reasonable diligence. Although he tendered the unsigned checks in time, he did not take the proper care to see that the checks were properly completed before mailing them. Therefore, he did not exercise reasonable diligence. Nor was his inadvertent failure to sign the checks a justifiable excuse. Negligence or inadvertence do not justify failure to pay on time since they are events within the control of the lessee. The Heirs of John W. Firth, 17 IBLA 125 (1974); Schubert Byers, 17 IBLA 255 (1974); Louis Samuel, 8 IBLA 268, 274 (1972). Therefore, appellant's petition for reinstatement must be denied.

Appellant's first contention on appeal is that the rental for each lease was paid before the anniversary date. He argues that each of the unsigned checks presented before July 1 was clearly identified as coming from him and as to the purpose for which it was drawn; that there is no requirement in law that a check be in any specific form and so long as the check is for a certain sum and all parties are identified properly, payment of the check is simply a matter between the maker and the bank; that the Bureau made a subjective judgment that the checks were not properly drawn, a judgment it had no right to make as it could not determine the propriety of the checks without presenting them for payment; and that the bank would have, in fact, accepted the checks for payment. In support, appellant points to the following letter addressed to the Bureau by the bank on which the checks were drawn.

> This letter is in reference to our customer Richard V. Bowman, 1502 Standard Life Building, Jackson, Mississippi. Mr. Bowman brought forth two (2) checks of which he mailed to you on June 25, 1974, payable to the Bureau of Land Management. The check number 2759, in the amount of $135.00, was for payment on Annual Rental ES 11105, and the check number 2758, in the amount of $80.50, was for payment on Annual Rental ES 11282. These checks were sent to you in error without a signature, therefore, Mr. Bowman has contacted us to clerify [sic] the matter.
>
> Our policy on an unsigned check presented for payment is to call our customer by telephone to verify that the check is good and was written by them, occasionally we send letters on such matters instead of telephoning our customer. When we have had the unsigned check approved by its maker we honor the check as if it were signed.

If we can be of any further assistance, please do not hesitate to contact us.

[2] These arguments, although commendable, are unpersuasive. The Department has held that it is the timely receipt of payment in the form of a negotiable check, money order or cash which prevents the automatic termination of a lease, and the tender of an unsigned check prior to the anniversary date of a lease availed the lessee "nothing," since it could not be considered as payment of the required rental before the anniversary date of the lease. Duncan Miller, A-31095 (February 2, 1970). In his opinion M-36631 of October 11, 1961, the Solicitor of the Department of the Interior said:

> The basic rule of law regarding the effective date of payment by check is expressed in 40 Am. Jur. 775, payments, sec. 86, as follows: "* * * Payment by bill or check becomes absolute payment of the debt when the check is paid on presentation. On such payment of the check, the debt is deemed to have been discharged from the time when the check was given * * *." [Case citations omitted.]

and "If a second check is substituted for the original one tendered as rental payment, payment can only be credited as of the time when the second check is tendered." 2/ Cf. John Oakason, 13 IBLA 80 (1973) (Check returned by the bank as uncollectible because the proper endorsement was missing).

Under "Negotiable Instruments," BLACK'S LAW DICTIONARY 1187, 1188 (Rev. 4th ed. 1968), says, in pertinent part:

> Under the Uniform Negotiable Instruments Act, an instrument, to be negotiable, must be in writing and signed; must contain an unconditional promise or order to pay a certain sum of money on demand, or at a fixed and determinable future time; * * * (Emphasis added).

2/ In the instant case, the payments can only be credited as of July 8, 1974, the date on which appellant returned the signed checks to the Bureau.

The Uniform Commercial Code, Anderson (2d ed. 1971), § 3-104, has the same provision. "In form and contents checks are in many respects like bills of exchange, as each is for a specific sum payable in money and, in both cases, there is a drawer, a drawee, and a payee. The two chief characteristics of checks are that they are drawn, on a bank, and that they are payable instantly on demand." (Emphasis added). 10 C.J.S. Bills and Notes § 5.b.(2). "The essence of the dual character of a check as a bill of exchange lies in the fact that it is an unconditional order in writing to pay a sum certain in money on demand, and an instrument having a drawer, a drawee, and a payee. * * * checks * * * are payable instantly on demand * * *." (Emphasis added). 11 AM. Jur. 2d, Bills and Notes § 18.

Thus, as we can see from the authorities cited above, in order to prevent automatic termination of an oil and gas lease, rental must be tendered on or before the due date in the form of a negotiable check. A negotiable check must be signed and payable instantly on demand. The unsigned checks tendered by the lessee before the due date were not negotiable. The Bank's stated policy of contacting its customers by telephone or by letter to verify the authenticity of an unsigned check presented for payment does not clothe an unsigned check with the mantle of negotiability.

Secondly, appellant contends that he exercised far more than reasonable diligence in the payment of rental for each lease, in that he mailed the checks on June 25, 1974, by certified mail, return receipt requested, and they were received by the Bureau on June 27, 1974, well in advance of the anniversary date. None of these facts are disputed. The controlling matter here is that he did not exercise reasonable care or diligence to assure himself that the checks were signed before mailing them. He further said that had the Bureau presented the checks for payment in the normal course of business, they would have been paid. The short answer is that they were unsigned and were, therefore, not negotiable checks.

Lastly, appellant contends that the Bureau was under a positive duty to handle this matter other than in a routine manner; that a telephone call to him under the circumstances was required; and that such a call would have resulted in the Bureau being advised that the checks would be accepted when presented for payment.

[3] Bureau personnel have no affirmative duty to take extraordinary measures to save a lessee from the possible consequences of his own negligence. The government is not estopped by the failure of Bureau personnel to take extraordinary actions. This Board has

held that any action taken, or any omission to act promptly, on the part of Bureau of Land Management personnel, cannot vitiate the statutory mandates of the Mineral Leasing Act, as amended, 30 U.S.C. §§ 181 et seq. Duncan Miller, 12 IBLA 201, 204 (1973). Even if we were to assume, arguendo, that the Bureau did not act correctly in this case, the Board has held that, normally, there can be no estoppel against the government based on the incorrect or unauthorized acts of its employees. Atlantic Richfield Company, 16 IBLA 329, 81 I.D. 457, 462 (1974), and cases cited.

Accordingly, we must find that the petition for reinstatement was properly denied.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision below is affirmed.

Anne Poindexter Lewis
Administrative Judge

I concur:

Martin Ritvo
Administrative Judge

ADMINISTRATIVE JUDGE THOMPSON CONCURRING SPECIALLY:

I agree with the majority opinion, but wish to stress certain points in response to appellant's contention that submission of the unsigned check was a payment and should have been accepted by the Bureau and sent through the banking procedures. The action by the Bureau in refusing the check and returning it to appellant for signing was proper. The Uniform Commercial Code (hereafter cited as U.C.C. and as set forth in ANDERSON, UNIFORM COMMERCIAL CODE (2d ed. 1971)), is generally adopted throughout the United States. A writing to be a negotiable instrument under the U.C.C. must be signed by the maker or drawer, U.C.C. § 3-104. While a signature may include symbols other than writing, it must be made with the intent to authenticate a writing and usually a handwritten signing will be the authenticating act even if a printed, stamped or typewritten name otherwise appears on the instrument. U.S.C. § 1-201(39); 2 ANDERSON § 3-401:10; 1 ANDERSON § 1-201:125. Under the Code no person is liable on an instrument unless his signature appears thereon, U.C.C. § 3-401(1). A bank may pay money out of a depositor's account only in compliance with a depositor's instructions and, therefore, banks should only honor those checks which bear the depositor's valid signature. 3 ANDERSON § 4-401:7.

The fact that appellant's bank may honor unsigned checks upon verification by the maker does not change the propriety of the Bureau's action. Under the general law the bank was not obligated to make such a verification. Furthermore, it is not incumbent upon the Bureau to anticipate any special arrangements or favors which a bank may give to a depositor, when a check on its face does not meet the general requirements of a negotiable instrument.

Joan B. Thompson
Administrative Judge